Supreme Court, U.S.
FILED

951220 JAN 29 1996

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

PATRICIA PUGLIATTI,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA WORKMEN'S COMPENSATION BOARD,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the Eleventh Amendment bar a federal court from exercising jurisdiction over a citizen's claim against her state's Workmen's Compensation Board where:

(a) The claim is based upon allegations of an unconstitutional application of a Workmen's Compensation forfeiture statute;

(b) The forfeiture had been sustained in state agency and judicial appellate reviews;

(c) The federal complaint seeks only prospective, non-monetary declaratory relief; and

(d) Damages, if any, resulting from this action are payable only by an employer?

OPINIONS BELOW

I. Order and Opinion of the Honorable J.M. Kelly, Judge, United States District Court for the Eastern District of Pennsylvania dismissing Petitioner's case pursuant to Rule 12(b)(6) F.R.C.P. entered March 27, 1995 at Docket Number 94-5864.

II. Judgment Order of the United States Court of Appeals for the Third Circuit dated October 31, 1995.

STATEMENT OF JURISDICTION

The Petitioner cites 28 U.S.C. § 1254 as the statutory provision conferring jurisdiction upon the United States Supreme Court to review the judgment of the Third Circuit, and vicariously thereby, the judgment of the Honorable J.M. Kelly of the United States District Court for the Eastern District of Pennsylvania.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution Amendment XI:

> Suits against states — Restriction of judicial power.
>
> The Judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

STATEMENT OF THE CASE

This case was commenced by the Petitioner in the United States District Court for the Eastern District of Pennsylvania with a complaint requesting a declaration that the Pennsylvania Workmen's Compensation Board's order of forfeiture be declared unconstitutional. The Commonwealth of Pennsylvania, acting through the Office of its Attorney General successfully moved for dismissal of the action under F.R.C.P. 12 (b)(6) citing the Eleventh Amendment of the Constitution of the United States for the proposition that an action against the Commonwealth of Pennsylvania Workmen's Compensation Board is constitutionally barred even though the relief Petitioner requested was prospective and claimed no money damages from the state.

A. Statement of Facts Material to the Case

On May 27, 1992 a workmen's compensation referee (judge) issued an order declaring that Petitioner had forfeited all entitlement to past and future workmen's compensation benefits payable by her former employer. The Petitioner had made an earlier election to treat a lumbar herniation chiropractically rather than with surgery. The election was unaccompanied by any notice that a forfeiture would or could result by the election to treat with one branch of a statutorily recognized "healing art" over another. One year later, the employer presented medical testimony that Petitioner's election "may" have placed her condition beyond a statistically favorable six month window of surgical opportunity. On that basis a year later the employer was able to invoke 77 P.S. § 306(f)(4) of the Pennsylvania Workmen's Compensation Act which provides for a forfeiture of all rights to workmen's compensation benefits to an employee who refuses reasonable services of a duly licensed practitioner of the "healing arts."

In spite of arguments raising due process protections, the Workmen's Compensation Board and the Commonwealth Court of Pennsylvania sustained the referee. After exhausting direct appeals, Petitioner commenced an action in the federal District Court for the Eastern District of Pennsylvania naming the Pennsylvania Workmen's Compensation Board as a defendant in an action seeking a declaration that the procedures employed in the Petitioner's case were violative of the due process requirements of the United States Constitution. Only prospective, non-monetary relief was sought against this state agency.

REASONS FOR GRANTING THE WRIT

The Eleventh Amendment immunity does not absolutely preclude a federal court from issuing prospective, injunctive relief where such relief is premised upon a federal constitutional violation and not state law. The Petitioner claims that a property right in continued workmen's compensation benefits was unconstitutionally terminated by state officials implementing a state procedure. The Petitioner sought a declaration that the termination proceedings in her case were violative of the due process requirements of the Fifth and Fourteenth Amendments to the United States Constitution. Any reversal of the forfeiture order would have only reinstated the employer's obligation to continue paying benefits.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that the decisions of the federal District Court be reversed and that this matter be remanded for trial.

Dated: January 29, 1996

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED OCTOBER 31, 1995

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1249

PATRICIA PUGLIATTI,

Appellant

v.

COMMONWEALTH OF PENNSYLVANIA WORKMAN'S COMPENSATION BOARD

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 94-cv-05864)
District Judge: Honorable James McGirr Kelly

Submitted Under Third Circuit LAR 34.1(a)
Tuesday, October 24, 1995

BEFORE: SLOVITER, *Chief Judge,*
COWEN and GARTH, *Circuit Judges*

JUDGMENT ORDER

After consideration of the contentions raised by appellant, Patricia Pugliatti, it is

ADJUDGED AND ORDERED that the judgment of the

Appendix A

district court entered March 27, 1995 be and the same is hereby affirmed.

Costs taxed against appellant.

By the Court,

s/ illegible
Circuit Judge

ATTEST:

s/ P. Douglas Sisk
P. Douglas Sisk, Clerk

DATED: OCT 31 1995

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FILED MARCH 27, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 94-5864

PATRICIA PUGLIATTI

v.

COMMONWEALTH OF PENNSYLVANIA WORKMEN'S COMPENSATION BOARD

MEMORANDUM AND ORDER

J.M. KELLY, J. **MARCH 24, 1995**

Presently before the court is the Motion of Defendant Commonwealth of Pennsylvania Workmen's Compensation Board to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

Plaintiff's workers' compensation benefits were discontinued when a workers' compensation referee found that she had refused reasonable and necessary medical treatment pursuant to Pa. Stat. Ann. tit. 77, § 531(4) (1992). Plaintiff appealed to the Pennsylvania Workmen's Compensation Board and then to the Pennsylvania

Commonwealth Court. Both appeals were decided against Plaintiff. Plaintiff then filed this action in this court alleging that the Pennsylvania Workmen's Compensation statutory scheme denied her due process of law.

Defendant bases its motion to dismiss on three separate arguments. First, Defendant asserts that the Eleventh Amendment to the United States Constitution bars this action. Second, Defendant claims that the court does not have the power to review a state court decision. Third, Defendant argues that this court must give full faith and credit to the state court decision. The court will address only the first argument as it is dispositive of the case.

The Eleventh Amendment prevents federal courts from exercising jurisdiction over a case brought against a state, even if by a citizen of that state. U.S. Const. amend. XI, *Welch v. Texas Highways & Public Transp. Dept.* 483 U.S. 468, 487 (1986), *citing Hans v. Louisiana,* 134 U.S. 1, 15 (1890). The Eleventh Amendment applies whether the relief requested is a money judgment or an injunction. *Cory v. White,* 457 U.S. 85, 91 (1981). The state's Eleventh Amendment immunity extends to its departments and agencies. *SEPTA v. Pennsylvania Public Utilities Comm'n,* 802 F. Supp. 1273, 1285 (E.D. Pa. 1992), *citing Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 100 (1984).

In her complaint, Plaintiff names Defendant as "the Commonwealth of Pennsylvania which has delegated certain authority to its Department of Labor and Industry." (Compl. ¶ 3). The Commonwealth of Pennsylvania is one of the United States. The Department of Labor and Industry ("Department") is an administrative department of the Commonwealth. Pa.

Appendix B

Stat. Ann. tit. 71, § 61 (1990). The Workmen's Compensation Appeal Board ("Board") is an administrative board within the Department of Labor and Industry. Pa. Stat. Ann. tit. 71, § 62 (1990). Thus, even if Plaintiff had named the Board or the Department as defendants, they would be immune under the Eleventh Amendment. *See id.*

In addition, Plaintiff's case does not fall under the two exceptions to Eleventh Amendment immunity. The exceptions are where a state consents to being sued in federal court or Congress abrogates the states' immunity. *Atascadero State Hosp. v. Scanlon,* 473 U.S. 234, 238 (1985). The Commonwealth of Pennsylvania has withheld consent to be sued in federal court. 42 Pa. Cons. Stat. Ann. § 8521(b) (1982). Finally, Plaintiff's complaint makes no mention of any abrogation by Congress with regard to this suit. As such, the court has no subject matter jurisdiction over this case. The case will be dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

Accordingly, in consideration of the Defendant's Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted, and Plaintiff's Response, it is hereby ORDERED that Defendant's Motion to Dismiss is GRANTED as the court has no subject matter jurisdiction over the matter.

BY THE COURT:

s/ James McGirr Kelly
JAMES McGIRR KELLY, J.